

# COMMISSION

## COMMISSION DECISION

of 9 December 1998

### on State aid which Germany is planning to implement in favour of MCR Gesellschaft für metallurgisches Recycling mbH, Eberswalde (Brandenburg)

(notified under document number C(1998) 4277)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/592/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry<sup>(1)</sup>, and in particular Article 3 thereof,

Having called on interested parties to submit their comments pursuant to those provisions and having regard to their comments,

Whereas:

#### I. PROCEDURE

By letter dated 29 April 1997 Germany notified the Commission of a proposal to grant environmental aid to the company MCR Gesellschaft für metallurgisches Recycling mbH, hereinafter referred to as MCR. The proposal was notified pursuant to Article 6 of Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, hereinafter referred to as the Steel Aid Code.

The Commission asked for further information by letters dated 22 May 1997, 11 July 1997 and 1 October 1997. Germany furnished the Commission with supplementary information by letters dated 20 June 1997, 24 September 1997 and 23 October 1997.

By letter dated 19 January 1998 the Commission informed Germany of its decision to initiate the procedure laid down in Article 6(5) of the Steel Aid Code in respect of the proposal to grant environmental aid.

In addition the Commission issued a suspension order pursuant to the second subparagraph of Article 6(4) of the Steel Aid Code concerning the payment of a regional investment aid which was approved in 1994.

In December 1994 the Commission had approved regional investment aid to the same project (N 671/94). It did so pursuant to Articles 1 and 5 of Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry<sup>(2)</sup>, (hereinafter referred to as the '1991 Steel Aid Code'). According to the second subparagraph of Article 1(3) the deadline for payments of this type of aid falling under Article 5 was 31 December 1994.

The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities*<sup>(3)</sup>. The Commission called on interested parties to submit their comments.

The Commission received comments from interested parties. It forwarded them to Germany, which was given the opportunity to react, its comments being received by letter dated 7 July 1998.

Germany furnished additional information by letters dated 27 February 1998, 12 June 1998, 21 August 1998, 18 September 1998, 27 October 1998, 4 November 1998, 11 November 1998 and 12 November 1998.

#### II. DETAILED DESCRIPTION OF THE AID

The aid is to be granted for a new plant which can recycle old motor vehicles and residues from metal parts. Germany claimed the emissions produced by the MCR process improved on existing environmental standards.

<sup>(1)</sup> OJ L 338, 28.12.1996, p. 42.

<sup>(2)</sup> OJ L 362, 31.12.1991, p. 57.

<sup>(3)</sup> OJ C 114, 14.4.1998, p. 8.

The notification concerned a proposal to grant environmental aid in the form of an interest subsidy attached to two loans to MCR. One loan of DEM 65 million was to be granted via the ERP-Umweltkredit programme at an interest rate of 4,75 % fixed for 10 years; the duration of the loan is 20 years, with no repayments of principal being demanded in the first five years. Another loan of DEM 32 million was to be granted via the DtA-Umweltkredit programme. The interest rate was to be fixed for 10 years at 5,93 % and the loan maturity was 20 years with a three-year grace period. Both loans were to be covered to the extent of 80 % by a deficiency guarantee provided by the *Land*.

During the procedure Germany changed its proposal to grant aid. As regards the loan of DEM 65 million, the effective interest rate has been reduced to 3,80 %. For the loan of 32 million, Germany has undertaken not to grant the loan at an interest rate below the five- to 10-year reference rate applicable at the time the loan is granted. Furthermore, the guarantee will cover 80 % of loans amounting to a maximum of DEM 67 976 000, which is the total amount eligible for aid. Contrary to what was stated at the time of the opening of the procedure, MCR will pay a premium for the guarantee. The guarantee will be provided under the Federal Guarantee Programme in favour of Private Enterprises, which was approved by Commission Decision in cases N 81/93 and N 297/91. The fee is 0,5 % p.a. of the sum loaned, together with a one-off application fee of DEM 25 000.

In opening the procedure the Commission stated that the interest subsidy attached to the two loans constituted State aid corresponding to the difference between the interest rate on the loans and the long-term reference rate of 6,15 % (on 1 November 1998 this reference rate was reduced to 5,41 %). Furthermore, the guarantee was considered to entail a State aid element.

The Commission opened the procedure because the information provided at the time did not enable a distinction to be drawn between the investment cost necessitated by the environmental protection and the basic investment. In addition, it was not possible to examine the proportionality of the State aid — that is, to examine the level of aid in relation to the environmental improvement that is achieved and the investment necessary for achieving the improvement.

Furthermore, Germany claimed that the new production facility could achieve energy savings of some 50 %. However, the advantage resulting from these savings was not taken into account when assessing the eligible costs.

Also, the Commission questioned whether the project would lead to a significant improvement on mandatory environmental standards. This was reinforced by the fact that the same project was considered in 1994 under Article 5 of the 1991 Steel Aid Code dealing with State aid for investment.

Finally, the Commission had serious doubts whether the investment subsidy approved in 1994 was still compatible with the common market, because the (new) Steel Aid Code, contrary to the 1991 Steel Aid Code, does not provide a legal basis for regional investment aid in (the eastern part of) Germany. It appeared that the regional aid had not been paid before 31 December 1994 and that it was likely to be paid immediately following a request by MCR. The Commission therefore ordered a suspension of the disbursement until it had adopted a final decision regarding this investment subsidy.

### III. COMMENTS FROM INTERESTED PARTIES

The Commission received comments from four interested parties. Usinor, Lech-Stahlwerke GmbH and Neue Maxhütte Stahlwerke GmbH directly encouraged the Commission to take a negative decision, while Federec Metal to a large extent expressed its disbelief regarding the expected environmental benefits.

In the comments it was contested that the cost necessitated by the environmental protection measures would amount to DEM 97 million. Furthermore, reference was made to attempts to recycle such scrap which had previously proved unsuccessful in the steel sector. It was also stated that MCR would be unable to produce semi-finished steel.

It was argued that the project was uneconomic and therefore not eligible for aid. Reference was made to a study by Roland Berger, who in 1994 concluded that a recycling project would not be viable. It was further argued that, although in 1994 the MCR process might still have appeared viable, it was now no longer viable owing to scrap price trends, quality problems with semi-finished goods and prices for the disposal of plastic waste. On this basis, it was claimed that the State would have to intervene as a guarantor and competition would be distorted in the long term. Furthermore, it was stated that the investment grant of DEM 24 million would be sufficient on its own to upgrade an existing plant in order to achieve emission values which would meet the 17. BundesImmissionsschutzverordnung (17th Federal Order concerning Protection against Emission — 17.BImSchV).

It was also stated that it was doubtful whether the MCR process would be environmentally friendly, since it would discharge huge amounts of gas, which should also be treated in accordance with the environmental legislation. Furthermore, it was argued that the environmental effects should be measured against what could be expected to be mandatory standards in the future. In fact it would be appropriate to compare the effects with the standards applied in France through the 'Accord Cadre sur le traitement des Véhicules Hors d'Usage' (Framework agreement on the processing of end-of-life vehicles).

Finally, it was stressed that the 1991 Steel Aid Code had to be adhered to and, therefore, the regional investment aid approved in 1994 should not be paid to MCR.

## IV. COMMENTS FROM GERMANY

As regards the environmental nature of the project, Germany states that the MCR process will result in emissions which are significantly below the applicable mandatory standards. The standard applying to MCR as a steel plant is the fourth Bundesimmissionschutzverordnung, hereinafter referred to as the 4. BImSchV, and not the 17th BImSchV, as was stated at the time of the opening of the procedure. The latter applies to incinerator plants. The difference between emissions by MCR and the levels set out in the fourth BImSchV is displayed in the table below.

**Difference between emissions by MCR and the levels set out in the fourth BImSchV**

(mg)

Chemical compound	Fourth BImSchV or technical instruction air	Emissions from MCR
SO <sub>2</sub>	500	20
HF	5	0,5
HCl	30	3
NO <sub>2</sub>	500	0,09
Cd, Ti	0,2	< 0,05
Hg	0,2	< 0,05
Sb, As, Pb, Cr, Co, Cu, Mn, Ni, V, Sn	5,0	< 0,05
Total mass of dust	20	7

According to Germany the 17th BImSchV is the strictest standard in Europe and the MCR process produces emissions 20 to 60 % lower than levels in that order.

Apart from the low emission levels the recycling process is in itself favourable to the environment since it is a comprehensive process for the complete and environmentally sound disposal of scrap metal from motor vehicles and other types of problem scrap material.

At present, motor vehicles that are to be stripped down and used as scrap for electric arc furnaces are fed into a shredder. At the end of the shredding process parts of the vehicle such as the engine, tyres, etc. are removed but waste arises in the form of organic material (plastics, paints, etc.) which had originally

been part of the vehicles. According to Germany some 600 000 tonnes of these highly toxic waste products have to be dumped each year.

In the MCR plant, through the physical processing of specific types of heavily polluted scrap metal which cannot be further processed using existing procedures, and through treatment involving a high-temperature smelting process, secondary raw materials such as zinc and lead are recycled. After the removal of liquids and certain parts of the vehicle, the remainder is pressed into bundles and then fed into the smelter. The organic material still present in the bundles is transformed, via carbonisation, into coke and serves as a highly concentrated energy carrier. As the energy is being released in the heart of the smelter, less external energy is required for the smelting process, resulting in the claimed energy savings of up to 50 %.

The MCR process has the following advantages over existing disposal/recycling processes:

- a reduction in the use of primary energy (by up to 50 %),
- emission levels that are well below legal standards, and
- avoidance of waste comprising light plastic shredding residues, some of which are highly toxic.

To underline the environmental benefits of the project, attention is drawn to the fact that the process developed by MCR in itself achieves an objective of environmental policy within the European Union. It is known that highly toxic substances can contaminate soil and groundwater and shredder waste is classed under international, Community and Member State waste legislation as hazardous (see the proposal for a Council Directive on end-of-life vehicles of 9 July 1997<sup>(1)</sup>), one of the priorities of which is to develop strategies and measures to prevent such waste.) The Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal also classes light plastic shredding residues as hazardous.

Germany also states that the process reduces the quantity of flue gas to a minimum. This is achieved by avoiding feeding the process with additional air and by avoiding the use of air to cool the flue gas. In contrast to other technologies, MCR will operate a closed system for its flue gas. The gas is treated in a multi-stage cleansing process which involves consecutive phases of purification. As a result, the emissions of flue gas and its components are as much as 90 % lower than those associated with comparable processes.

Regarding the proposal to grant subsidised loans, Germany argues that the period for which the interest rate on a loan is fixed is the economically relevant criterion for determining the interest rate rather than the loan's maturity. For the loans amounting to DEM 65 million and DEM 32 million, the loan interest rate is fixed for only 10 years, even though the maturity is 20 years. If the loan continues beyond the 10-year period, the loan conditions must be renegotiated. The borrower has the right simply to terminate the lending relationship after 10 years. Otherwise, the interest rate will be adjusted to the current market rate. The five- to 10-year reference rate should therefore be used instead of the longer-term reference rate when assessing the aid element.

Contrary to what was stated at the time of the opening of the procedure, Germany indicated that a guarantee fee of 0,5 % p.a. of the sum loaned and a one-off application fee of DEM 25 000 are paid for the 80 % performance guarantee.

<sup>(1)</sup> OJ C 337, 7.11.1997, p. 3.

As was requested at the time of the opening of the procedure, Germany has produced a precise breakdown of the investment costs necessitated by the achievement of the environmental improvement and the cost of a new plant meeting the statutory environmental standards with the same capacity. The difference in cost is claimed to be DEM 69 810 000, as follows:

Cost of investment	Electric steel plant (Values in DEM)	MCR plant (Values in DEM)	Additional cost for MCR (in DEM)
Cost of land and buildings	18 590 000	22 700 000	4 110 000
Cost of plant and equipment	41 700 000	107 400 000	65 700 000
Total cost	60 290 000	130 100 000	69 810 000

At the opening of the procedure, the Commission pointed out that lower production costs, such as energy costs, would have to be deducted from the eligible cost. Germany now states that it is realistic to assume that the yearly energy savings will amount to DEM 500 000 to 600 000. The plant will, on the other hand, require higher production costs of approximately DEM 300 000 to 350 000 for maintenance and operation because the process is more complex than in a traditional plant. Based on a 10-year period, the current value of the overall savings in production costs is put at DEM 1 834 000. Consequently, the amount eligible for environmental aid is DEM 67 976 000.

Germany takes the view that MCR received the investment grant approved in Case N 671/94 before 31 December 1994. MCR was informed by letter dated 27 December 1994 that an investment grant of DEM 24 092 500 had been awarded. According to the Investment Bank of the *Land* of Brandenburg, the amount was credited to MCR's account on 30 December 1994. It was agreed that the account was not subject to termination by either party. MCR can have payments made out of the funds paid into the account provided it can demonstrate that investment has taken place, whilst the organisation providing the grant can no longer exercise control over the take-up of funds. This means that the organisation providing the grant no longer has access to the funds, which have been paid into the account in the name of MCR. Germany accordingly considers it inappropriate to investigate the investment grant as part of the current proceedings under Article 6(5) of the Steel Aid Code.

In the reply from Germany to the comments from third parties it is stated that, since Germany has already reduced the eligible amount, the argument that DEM 97 million is too high is no longer valid. Furthermore, it is stressed that the project has positive effects on the environment. The emissions from MCR will be significantly below mandatory standards, moreover, and they will be 20 to 60 % below those set out in the 17th BImSchV. Furthermore, a comparable conventional plant will

not create (primary) energy savings and will not exclude the production of dangerous organic shredder waste, the disposal or dumping of which still poses considerable problems for the local authorities responsible. The Clausthal-Zellerfeld technical university has produced an independent study which concludes that the MCR process represents an intelligent solution to the problem, and simultaneously provides a method for treating materials of this type, which has hitherto been lacking. Furthermore, Germany stressed once more that the MCR process also results in a significant reduction in the levels of flue gas emission.

It is correct that the process is not in itself intended to produce steel, but rather primarily fulfils a disposal function which results in the recovery and recycling of the constituent materials, thereby saving resources. A side-benefit of this process is that it does not generate the harmful waste products associated with the shredding process. Because the MCR process involves smelting the recovered material and then subjecting it to further processing, a viable product is obtained, comparable in quality to that of a standard electric steel plant, and one which is perfectly suitable for use in further manufacturing processes, such as in a rolling mill. The quality produced is Baustahlqualität St 37.

The Roland Berger study quoted by Neue Maxhütte Stahlwerke GmbH did not, as that undertaking maintains, come to the conclusion that the metallurgical recycling process is fundamentally uneconomic, but rather that the parameters and the technical configuration that had been laid down for the project planned by them were unrealistic. Furthermore, the MCR process is not comparable with the approach assessed for Neue Maxhütte Stahlwerke.

Germany argues that the statement regarding the lack of viability of MCR is invalid because it is based on false assumptions. In contrast to an electric furnace production line, the MCR process does not use any shredder waste (the price for which is currently over DEM 200 per tonne) and there are no disposal costs associated with this MCR process. The annual tonnage of scrap used by MCR amounts to no more than 90 000 tonnes of car-body scrap and other types of problem scrap. The car-body scrap is procured almost exclusively from local suppliers and does not therefore affect conditions of supply in southern Germany. The MCR business plan was reviewed by Price Waterhouse, which concluded that the investment in question is an economically viable project, and, moreover, is a process that sets significant new standards in environmental protection including new standards for the treatment of ecologically damaging materials. This is an objective which is in line with that enshrined in the proposal for a European Union Directive on scrapped automobiles.

Germany points out that the Aicher group, to which Neue Maxhütte Stahlwerke GmbH and Lech Stahlwerke GmbH belong, has stakes in both a waste incineration facility and an underground waste dump, to which the supply of organic shredder waste would decline if other methods of disposal were introduced.

## V. ASSESSMENT OF THE AID

As MCR is engaged in the production of a product which is mentioned in Annex I to the ECSC Treaty, the notified State aid has to be examined in the light of that Treaty. Article 4(c) of the ECSC Treaty explicitly prohibits State aid. However, the Steel Aid Code derogates from Article 4(c) of the ECSC Treaty.

One purpose of the Steel Aid Code is to ensure that the steel industry and other industries have equal access to aid for environmental protection. Article 3 of the Steel Aid Code stipulates that State aid for environmental protection may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection<sup>(1)</sup>, and in conformity with the criteria for their application to the ECSC steel industry outlined in the Annex to the Steel Aid Code.

Point 3.2.1 of the environmental aid guidelines authorises, in principle, aid for investment in land, buildings, plant and equipment intended to reduce or eliminate pollution in order to protect the environment within the limits laid down in the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives and general investment costs not attributable to environmental protection are excluded. In particular, in the case of new or replacement plants, the cost of the basic investment involved merely to create or replace production capacity without improving environmental performance is not eligible.

According to point 3.2.3 B of the environmental aid guidelines, State aid for investment which allows significantly higher levels of environmental protection to be attained than those required by mandatory standards may be authorised up to a maximum of 30 % gross of the eligible costs. The level of aid actually granted for exceeding standards must be in proportion to the improvement of the environmental protection that is achieved, and to the investment necessary for achieving the improvement.

The Annex to the Steel Aid Code imposes strict conditions and safeguards to avoid general investment aid for new plants or equipment being granted under cover of environmental protection. Where aid is granted to encourage firms to contribute to significantly improved environmental protection regarding an investment which is not replacing an existing plant, the investor will have to demonstrate that a clear decision was taken to opt for higher standards which necessitated additional investment — that is to say, that a lower cost solution existed. Any advantage in terms of lower production costs from these significant improvements has to be deducted from the costs that are eligible for the aid described in point 3.2.3 B of the environmental aid guidelines.

Initially, Germany claimed that, out of the total investment of DEM 130,1 million, DEM 97 million could be considered necessary to improve significantly on mandatory environmental standards. No distinction was made between investment costs which were necessitated by the achievement of the environmental

improvement and the basic investment. However, during the proceedings Germany has provided a detailed comparison of the cost of an MCR plant exceeding mandatory standards and a lower-cost solution with a comparable capacity which meets the mandatory standards, the cost of the basic investment involved merely to create or replace production capacity without improving environmental performance being ineligible for aid. In addition, by the identification of a lower-cost solution, it has been demonstrated that a clear decision was taken to opt for higher standards which necessitated additional investment. Furthermore, the Commission has assessed the overall savings in production cost resulting from the significant improvements, and the savings have, as required by the Steel Aid Code, been deducted from the eligible cost. Finally, the claim by interested parties that the project is unviable does not appear to the Commission to be convincing, as it is manifestly based on inaccurate information. Therefore, on the basis of the information provided by Germany, the Commission is satisfied that the amount of DEM 67 976 000 is eligible for environmental aid.

At the opening of the procedure the Commission questioned whether the project would lead to a significant improvement on mandatory environmental standards. It has been resolved that the applicable mandatory standards for MCR as a steel plant are the fourth BImSchV. The emissions from MCR will be well below the mandatory standards, and they will be significantly (20 to 60 %) below the far stricter standards for incinerator plants set out in the 17th BImSchV. The Commission must assess the MCR process in relation to the mandatory standards and is not in a position, as was suggested by an interested party, to assess the project against what might be the future mandatory standards. In addition, the Commission acknowledges the importance of the recycling of toxic waste by MCR. On this basis the Commission is satisfied that the project is eligible for environmental aid.

When assessing the aid element the Commission initially compared the interest rates on the 20-year loans with the long-term reference rate. However, it accepts Germany's argument that the five-year reference rate covering loans running for five to 10 years should be applied in this case because the interest rate is fixed for only 10 years.

As regards the loan of DEM 65 million, based on the difference between the interest rate of 3,80 % and the reference rate of 4,87 % the interest subsidy has an aid intensity of 7,85 % which amounts to an aid intensity of 7,5 % when calculated on the basis of the whole eligible amount. The assessment is based on the condition that, if the DEM 65 million loan is renegotiated after 10 years, it will be granted at a market-related interest rate. Since Germany has agreed to grant the loan of DEM 32 million on the basis of the five-year reference rate applicable at the time the loan is granted, the Commission considers that this loan does not constitute aid. The Commission considers the guarantee covering 80 % of a maximum of DEM 67 976 000 to have an aid intensity of 0,5 %. The overall aid intensity for the environmental aid is therefore 8,0 %,

<sup>(1)</sup> OJ C 72, 10.3.1994, p. 3.

which is below the 30 % ceiling laid down in the environmental guidelines. In view of the significant improvement on the mandatory standards, the Commission concludes that the level of aid being granted is in proportion to the improvement of environmental protection and to the investment necessary for achieving that improvement.

On the basis of the information provided by Germany that the investment grant authorised under the 1991 Steel Aid Code was credited to an account in the name of MCR on 30 December 1994 and of the information that the organisation providing the grant no longer has access to the funds, the Commission considers that the grant was paid to MCR before the 31 December 1994 deadline. Since the aid was paid in accordance with the 1991 Steel Aid Code, the Commission ought to lift the suspension of payment ordered under Article 6(4) of the Steel Aid Code.

#### VI. CONCLUSIONS

On the basis of the above the Commission concludes that the loan of DEM 65 000 000 and the guarantee covering 80 % of loans amounting to a maximum of DEM 67 976 000 for an investment improving significantly on mandatory environmental standards can be authorised under Article 3 of the Steel Aid Code. Furthermore, the loan of DEM 32 000 000 is considered not to constitute State aid. In addition, the Commission is lifting the order suspending the regional investment aid of DEM 24 092 500. The Commission will, however, request Germany to inform it of the renegotiated conditions of the loan of DEM 65 000 000 if the loan is not terminated after 10 years,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The environmental aid which Germany is planning to implement in favour of MCR Gesellschaft für metallurgisches Recycling mbH, Eberswalde in the form of an interest-subsidised loan of DEM 65 000 000 and a guarantee covering 80 % of a maximum of DEM 67 976 000 is compatible with the common market for coal and steel.

#### *Article 2*

The order suspending the investment aid authorised by Commission Decision N 671/94 is hereby lifted.

#### *Article 3*

Germany shall inform the Commission of the renegotiated conditions of the loan of DEM 65 000 000 if the loan is not terminated after 10 years.

#### *Article 4*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 December 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*